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18
19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 ORACLE AMERICA, INC.

Case No. CV 10-03561 WHA

23 Plaintiff,

**ORACLE AMERICA'S OPPOSITION TO
GOOGLE INC.'S MOTION TO DISMISS
COUNT VIII OF PLAINTIFF'S
COMPLAINT OR, IN THE ALTERNATIVE,
FOR A MORE DEFINITE STATEMENT**

24 v.

25 GOOGLE, INC.

Date: November 18, 2010

Time: 8:00 a.m.

Dept.: Courtroom 9, 19th Floor

Judge: Honorable William H. Alsup

26 Defendant.

1 **I. INTRODUCTION**

2 On August 12, 2010, Oracle America, Inc. (“Oracle America”) sued Google, Inc.
 3 (“Google”), alleging infringement of patents and copyrights relating to Oracle America’s Java
 4 platform by Google’s reproduction and distribution of Java programming in its Android platform.
 5 On October 4, 2010, Google answered the patent claims (*see* Docket No. 32) and moved to
 6 dismiss only the copyright infringement claim (Count VIII) under Federal Rule of Civil
 7 Procedure 12(b)(6) (*see* Docket No. 33). In the alternative, Google moved for a more definite
 8 statement.

9 Contrary to Google’s contention, the original Complaint included sufficient detail to state
 10 a claim. However, for the avoidance of doubt, on October 27, 2010, Oracle America filed an
 11 Amended Complaint (Docket No. 36), which by operation of law superseded the original
 12 Complaint. The Amended Complaint renders Google’s motions moot. Oracle America’s
 13 Amended Complaint includes yet more details regarding its copyright claim, further satisfying the
 14 pleading requirements of Federal Rule of Civil Procedure 8. The Amended Complaint includes
 15 two new exhibits illustrating specific examples of copying (Exhibit I) and a side-by-side
 16 comparison of copied source code (Exhibit J). This provides an alternative and independently
 17 sufficient basis to deny Google’s motions.

18 **II. LEGAL STANDARD**

19 A complaint need contain only a “short and plain statement of the claim showing that the
 20 pleader is entitled to relief.” Fed. R. Civ. P. 8(a). “To survive a motion to dismiss, a complaint
 21 must contain sufficient factual matter, accepted as true, to state a claim to relief that is ‘plausible
 22 on its face.’” *Ashcroft v. Iqbal*, 556 U.S. ___, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp.*
 23 v. *Twombly*, 550 U.S. 544, 570 (2007)). Even after *Twombly* and *Iqbal*, Rule 12(b)(6) “[m]otions
 24 to dismiss are disfavored, as there exists a powerful presumption against rejecting pleadings for
 25 failure to state a claim.” *Momento, Inc. v. Seccion Amarilla USA*, No. C 09-1223 SBA, 2009 U.S.
 26 Dist. LEXIS 85295, at *1-*2 (N.D. Cal. Sept. 16, 2009) (citing *Gilligan v. Jamco Dev. Corp.*, 108
 27 F.3d 246, 249 (9th Cir. 1997)).

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1 For a motion to dismiss, the court must accept as true all allegations of material fact
 2 contained in the complaint and construe those allegations in the light most favorable to the
 3 plaintiff. *Al-Kidd v. Ashcroft*, 598 F.3d 1129, 1130 (9th Cir. 2010). “*Twombly* and *Iqbal* do not
 4 require that the complaint include all facts necessary to carry the plaintiff’s burden” and do not
 5 allow the court to impose a “probability requirement” at the pleading stage. *Al-Kidd v. Ashcroft*,
 6 580 F.3d 949, 977 (9th Cir. 2009). Instead, the complaint must simply provide “enough fact to
 7 raise a reasonable expectation that discovery will reveal evidence” to prove the claim. *Id.*
 8 (quoting *Bell Atl. Corp.*, 550 U.S. at 556); *see also Iqbal*, 129 S. Ct. at 1949 (holding that
 9 complaint must plead sufficient factual matter that, if true, states a claim for relief that is plausible
 10 on its face).¹

11 **III. ARGUMENT**

12 **A. Google’s Motions Should Be Denied As Moot Because The Amended
 13 Complaint Eliminates The Subject of Those Motions**

14 “It is hornbook law that an amended pleading supersedes the original, so the original is
 15 treated as non-existent.” *Bullen v. De Bretteville*, 239 F.2d 824, 833 (9th Cir. 1956) (“Once
 16 amended, the original no longer performs any function as a pleading . . .”). Here, Oracle
 17 America amended the Complaint as matter of course pursuant to Federal Rule of Civil Procedure
 18 15(a)(1)(B). Its “filing of an amended complaint moots the pending motion to dismiss.”
 19 *Goldstein v. City of Santa Rosa*, No. C 10-0163, 2010 U.S. Dist. LEXIS 25656, at *1 (N.D. Cal.
 20 Mar. 18, 2010); *see also*, e.g., *Feria v. Lehman Bros. Bank, FSB*, No. 10 CV 1412, 2010 U.S.
 21 Dist. LEXIS 77539, at *1 (S.D. Cal. Aug. 2, 2010) (“Because Defendant[’s] motion seeks
 22 dismissal of a complaint that is no longer the operative pleading in this case, the motion has
 23 become moot.”). Google’s Motion for a More Definite Statement fails for the same reason. This
 24 conclusion is particularly warranted because, as discussed below, Oracle America’s revised

25 ¹ As an initial matter, Oracle America objects to Google’s extensive reliance on facts outside the
 26 pleadings in its motion. As Google properly concedes, “the sufficiency of the pleadings must be
 27 determined by the pleading itself.” (Mot. at 3.) But, contrary to this admitted principle, Google
 makes extensive factual allegations regarding Google’s business practices and the Android
 platform technology. (Mot. 3-7.)

1 copyright infringement claim presents additional factual allegations, including particular
 2 examples of Google's illegal copying of Oracle America's copyrighted materials.²

3 **B. The Amended Complaint Adequately Addresses the Concerns
 4 Identified in Google's Motions**

5 At issue is Oracle's claim that, in violation of the Copyright Act, 17 U.S.C. § 101, *et seq.*,
 6 Google reproduced and distributed portions of Oracle's Java platform in and through Google's
 7 Android platform. "To state a claim for direct copyright infringement, plaintiff must satisfy two
 8 requirements: '(1) [plaintiff] must show ownership of the allegedly infringed material and
 9 (2) [plaintiff] must demonstrate that the alleged infringer(s) violated at least one exclusive right
 10 granted to copyright holders under 17 U.S.C. § 106.'" *Miller v. Facebook, Inc.*, No. C 10-00264
 11 WHA, 2010 U.S. Dist. LEXIS 61715, at *11 (N.D. Cal. May 28, 2010) ("*Miller II*") (quoting
 12 *A & M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001)). As explained below,
 13 Oracle America has met both requirements.

14 Google argues that the first element of the direct infringement pleading standard was not
 15 satisfied because Oracle America did not identify the material copied. (Mot. at 2, 11-12.) Oracle
 16 America alleges in the Amended Complaint the code, documentation, specifications, libraries,
 17 and other materials that comprise the protected Java platform along with the pertinent copyright
 18 registrations. (Am. Compl. ¶¶ 11, 38.) Identification of the copyright registrations issued is
 19 sufficient to establish ownership of the protected materials. *Miller v. Facebook, Inc.*, No. C 10-
 20 00264, 2010 U.S. Dist. LEXIS 31534, at *6 (N.D. Cal. Mar. 31, 2010) ("*Miller I*").

21 Google next argues that the second element of the pleading standard was not satisfied
 22 because Oracle America did not identify the alleged infringement. (Mot. at 2, 11-12.) This
 23 concern is also addressed directly by the Amended Complaint. Section 106 of the Copyright Act

24 ² Only in rare circumstances might a court make an exception and apply the defendant's motion
 25 to dismiss the original complaint to the amended complaint, as well. See, e.g., *Datastorm Techs., Inc. v. Excalibur Commc'nns, Inc.*, 888 F. Supp. 112, 114 (N.D. Cal. 1995) (defendant need not
 26 file a second motion where the only difference between the amended and original complaints was
 27 the addition of a defendant, because "to do otherwise would exalt form over substance."). The
 28 facts of *Datastorm* are quite different from those here, where Oracle America's claim has been
 supplemented with additional factual allegations.

1 reserves to the owner of the copyright the exclusive right to reproduce copyrighted works, and to
 2 prepare derivative works therefrom. *See* 17 U.S.C. § 106. Pleading a violation of a plaintiff's
 3 exclusive rights is sufficiently established by allegations of similarities between the copyrighted
 4 and infringing materials. *Miller II*, 2010 U.S. Dist. LEXIS 61715, at *17-18. Here, the Amended
 5 Complaint goes beyond a showing of mere similarities.

6 The Amended Complaint identifies infringing portions of Android, including Java method
 7 and class names, definitions, organization, and parameters; the structure, organization and content
 8 of Java class libraries; and the content and organization of Java's documentation, and provides
 9 references to evidence of copying and derivation available on Google's Android website. (Am.
 10 Compl. ¶ 40 & Ex. I (illustrating specific examples of copying).) Oracle America also provides
 11 an example of Google's infringing copying of source code (PolicyNodeImpl.java). (*Id.* & Ex. J
 12 (providing a side-by-side, line-for-line comparison of Oracle America's Java code and Google's
 13 Android code).)

14 Section 106 also prohibits unlicensed distribution of copyrighted works. *See* 17 U.S.C.
 15 106. “One contributorily infringes when he (1) has knowledge of another's infringement and
 16 (2) either (a) materially contributes to or (b) induces that infringement.” *Miller II*, 2010 U.S.
 17 Dist. LEXIS 61715, at *19 (quoting *Perfect 10, Inc. v. Visa Int'l Serv. Ass'n*, 494 F.3d 788,
 18 795 (9th Cir. 2007)). As alleged in the Amended Complaint, Google violates this provision by
 19 actively distributing Android and promoting its use by manufacturers of products and
 20 applications. Specifically, Google distributed Android to approximately 34 companies (the Open
 21 Handset Alliance) with intent that those companies distribute Android to others (developers and
 22 end-users). (*Id.* at ¶¶ 12, 41.)

23 Oracle America has alleged the “who, what, when, where, how” of Google's direct and
 24 indirect copyright infringement, satisfying Rule 8. More is not required. Google's motions
 25 should be dismissed.

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1 **IV. CONCLUSION**

2 Google's motion to dismiss Count VIII of the original complaint and its motion in the
3 alternative for a more definite statement are both moot, and should be denied.

4 Dated: October 28, 2010

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8 By: /s/ Richard S. Ballinger _____

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